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From Europe but beyond Europe: The Circulation of Rudolf von Jhering's Ideas in East Asia and Latin America

FROM EUROPE BUT BEYOND EUROPE: THE CIRCULATION OF RUDOLF VON JHERING'S IDEAS IN EAST ASIA AND LATIN AMERICA[1]

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The classics are those books that come down to us bearing upon them the traces of readings previous to ours, and bringing in their wake the traces they themselves have left on the culture or cultures they have passed through.

(Italo Calvino, "Why Read the Classics?")[3]

1. INTRODUCTION: WHY IS JHERING AMONG THE CLASSICS?

The question of how to define the classics is a perennial one in the history and philosophy of culture. No one has provided a definitive answer to this question, and it is posed again with renewed enthusiasm in each era. There are essentialist responses, such as that of literary critic Harold Bloom, who purportedly identified an intrinsic "sublimity" or "greatness" in certain works that made them canonical and universal.[4] Conversely, there are materialist proposals, such as that of the famed Marxist historian Arnold Hauser, who explained the configuration of the canon as a hegemonic phenomenon through which the dominant classes exalt some works and bury others based on political criteria.[5]

[1] This article is the product of Fondecyt Project N. 11140660, "El derecho como bien común". I would like to thank Álvaro Núñez and Hans-Peter Haferkamp for their kindness in allowing me to present an early draft in the law seminar at the Universidad Austral de Chile and in the Institute for Legal History at the Universität zu Köln. I also would like to thank Thomas Duve for his valuable methodological indications. See also Lloredo Alix (2016).

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[3] Calvino (2013) 40.

[4] Bloom (1995) 11-32.

[5] Hauser (1978). It should be noted, however, that Hauser's focus is not that of crass materialism: "there is nothing easier than to construct striking connections between the various styles in art and the social patterns predominating at any particular time, which are based on nothing but metaphor, and there is

Only by adopting a materialist perspective can we understand why some authors are elevated to the category of classics and others are not. No classic has been catapulted to these heights without the political and social support of a given regime or state of affairs. However, despite concepts attributed to Marxist historiography, this standpoint does not equate to a claim that works and authors carry unequivocally ideological messages. Instead, the opposite is true of the classics. Despite originating under more or less specific political conditions, they are capable of transcending such conditions and becoming a permanent crucible of interpretations. The classics arrive in our hands marked and enriched by all superimposed readings, laden with the various adhesions and perspectives—and hence, possibilities—they have accrued over time and with a succession of exegeses that are not always congruent with one another.

We encounter such a situation with Jhering. The reputation of this great jurist is inseparable from the political circumstances of Prussia, the hegemonic power of Europe in the late 19th century that guided the project of German unification under the baton of Otto von Bismarck. In fact, Jhering himself saw his project of methodological renovation as a reflection of the new demands of an industrialized Germany. In a letter to Bismarck, whom he deeply admired, Jhering wrote the following about the parallels between his sociological theory of law and the *Realpolitik* the Chancellor embraced beginning in the 1870s to consummate national unification (note that Jhering pompously refers to himself in the third person):

> Not only the man, but also the jurist, is conscious of the great influence exercised on him by Your Excellence. In the struggle he has sustained for years against the fruitless current that continues to dominate the legal science, which has abandoned the gaze toward real things for the mirage of logical consequence and abstract principles, you have always animated him and strengthened the notion that, within his limited sphere, he has only followed the encouragement offered by the master of *Realpolitik*. He is convinced that the example of Your Excellence will also be fruitful for the youngest generations and that a revolution will occur in legal science that will someday be known as the shift from a formalist to a realist method.[6]

In fact, as I have attempted to demonstrate elsewhere,[7] nearly all Jhering's intellectual contributions can be explained based on the historical circumstances of Germany in his day. First, Jhering's criticism of the exaltation of customary law was a *sine qua non* condition for defending the legislative activism that Prussia needed to lead the process of national unification. Second, the conception of subjective rights as legally protected interests mirrors the *Interessenpolitik* developed by Bismarck beginning in the 1870s, understood as a political strategy at the service of the reason of the State and oriented toward accomplishing collective purposes above individual preferences. Third, the focus on conflict in *The Struggle for Law* reflects the belligerent spirit of its author in the context of the Franco-Prussian war. Certain-

nothing more tempting than to make a show of such daring analogies. But they are just as fateful traps for truth as the illusions enumerated by Bacon…" (34).

[6] Jhering (1971) 444.

[7] Lloredo Alix (2012) 254 ff.

ly, this war inspired Jhering to write some ardent passages that viewed conflict as positive in contrast to the 18th-century tradition of the social contract. Finally, the shift toward sociological jurisprudence echoes Bismarck's social-reformist policy toward the 1880s, which moved Jhering to design a legal science that was less abstract and more conscious of the social needs resulting from industrialization.

In all of these transformations, we can observe the "honest conservative," described by Mario Losano.[8] Jhering was, in fact, a representative of the Prussian bureaucratic elite, decidedly critical of universal suffrage and in favor of a corporatist State. He defended the militaristic policy of Bismarck but was open to some innovations of socialism and conscious of the need to adapt certain political and theoretical principles to the requirements of industrial society, fleeing the social and constitutional impasse facing Germany in the quietist framework of counterrevolutionary ideas such as those of Savigny. Indeed, in the face of the stratified order and territorial dispersion of the old Holy Roman Empire, which lurked beneath Savigny's criticism of codification, Puchta's fascination with customary law, or Eichhorn's exaltation of German institutions,[9] Jhering proposed reasserting legislation as a tool for progress, strengthening the State, and socializing theory as an antidote to the rigidity of Roman law.

Precisely as a consequence of this flexibility, Jhering's thought has been capable of transcending its motivations and infiltrating numerous historical and cultural contexts, becoming a classic in the history of law and serving as an impulse for various theoretical trends. Although Jhering's work cannot be understood without alluding to the historical conditions of its creation, his ideas have surpassed those conditions to become an indelible patrimony of contemporary legal consciousness. From progressive orientations, such as the Alternative use of law or the Critical Legal Studies, to the Jurisprudence of interests ultimately associated with Nazism through the figure of Philipp Heck, Jhering's ideas have been reclaimed by representatives of diverse ideologies. In fact, despite his conservatism, Jhering is the only author that the Soviet jurist Piotr Stučka partially salvaged from among the "bourgeois jurists":

> In this way, the boldest and frankest representative of bourgeois legal science—and it should be admitted that this was precisely Jhering—did not arrive (or did not want to arrive) at a direct recognition of the classist nature of law, insisting to the contrary along the same dead end path.[10]

Similarly, from a theoretical perspective, a truly surprising pleiad of authors and movements lie in Jhering's wake. His influence is felt in *formalist theories*, such as Kelsen's, according to which the recipients of legal rules are the judges and officers charged with applying them, rather than citizens, an idea that was originally proposed by the German.[11] But Jhering's influence is also present in *anti-formalist currents*, such as the "free law" movement of judicial interpretation and American legal realism, or in attempts to rehabilitate natural law such

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[8] Losano (1970) 184-186.

[9] Beseler (1843) 342 ff. See also Contreras Peláez (2005).

[10] Stučka (1964) 16.

[11] Kelsen (1984). See also the review Kelsen wrote of the volume of correspondence published by Jhering's daughter, Helene Ehrenberg, in 1913: Kelsen (1913).

as that of Rudolf Stammler.[12] Jhering was chiefly responsible for associating law with State coercion for normativist positivism, whereas he was the starting gun of the sociological turn for the anti-formalists. In a certain sense, nearly all the theoretical trends later developed in juridical thought in the 20th and early 21st centuries come together in Jhering. Even a representative of current argumentation theory, Manuel Atienza, has sustained the possibility of rereading the German jurist as a model of the post-positivist conception; in his judgment, Jhering is situated in a line of "pragmatist" thinking—in the broad sense in which he understands this label—similar to authors such as Oliver Wendell Holmes or the modern exponents of the critique of positivism: Carlos Nino, Ronald Dworkin, or Robert Alexy.[13]

Meanwhile, Jhering's ideas have also resonated beyond the realm of legal science. Among sociologists, evidence exists of his influence in the early thinking of Émile Durkheim and Max Weber. Durkheim was only familiar with the contributions of the so-called "second Jhering" and, therefore, could only integrate some of his ideas regarding the social genesis of law.[14] Conversely, Weber was familiar with Jhering's work from the very beginning of his legal studies and was able to know all its facets. In 1882, as a young university student, he requested a copy of *The Spirit of Roman Law* as a Christmas gift, and the text would inspire him to develop his own theory about the "ideal types" of law and legitimacy.[15] In later phases of his work, the influence of the "second Jhering" is apparent in some of Weber's citations concerning the social value of the greeting in *Economy and Society*—a theme to which the German jurist devoted many pages in *Law as a Means to an End.*[16] Of anecdotal interest is this phrase the sociologist dedicated to our jurist in *Science as a Vocation*: "In fact, it is perfectly true that the best things occur to one while smoking a cigar on the sofa, as it happened to Ihering [sic]."[17]

Finally, Jhering's influence has also been felt in the realm of philosophy. It is worth mentioning the debate maintained by Franz Brentano, a principal source of inspiration for Husserl and remote precedent of phenomenology, with Jhering's ideas about the origin of moral knowledge. According to Jhering, the ethical notions varied along with different historical and social contexts, in open polemic with those that he called "nativist" theories, which hold that an innate juridical sentiment (*Rechtsgefühl*) exists independent of history.[18] On the contrary, Brentano believed that natural law existed as that instance that "in and of itself, according to its nature, is recognized as correct and binding",[19] an assessment that he sustained in explicit opposition with Jhering's ideas on the subject. Conjectures have also been made regarding the possible influence of Jhering on Nietzsche's *Genealogy of Morals* due to the

12 Stammler (1922) 36-38.
13 Atienza (2013) 803 ff.
14 Robles Morchón (2005) 125-134.
15 Treiber (2000) 97-108; Turner (1990) 539-553.
16 Weber (2002) 24, 27, 598.
17 Weber (2005) 193.
18 Jhering (2008).
19 Brentano (1955) 7.

numerous legal appraisals the philosopher makes in this work, their temporal proximity and the genealogical focus of both writers. In fact, the same work by Jhering that served as a target for Brentano, *Über die Entstehung des Rechtsgefühles,* has remarkable similarities to the essay by Nietzsche.[20] Finally, in contemporary philosophy, I unexpectedly found a reference to Jhering in the famous *Homo Sacer* by Giorgio Agamben: a quote from *The Spirit of Roman Law* in which our jurist explains the archaic legal figure of *homo sacer* and its parallel with other institutions of German law.[21] Although this reference is seemingly tangential, it is truly significant, given that Agamben's entire treatise centers on the imprecise profiles of this ancient legal institution and its importance to biopolitics.

As has been demonstrated, Jhering is a classic in the strictest sense of the term: an author onto whom numerous exegesis have been deposited over time and who, beyond the original motivations of his work, has served as an inexhaustible source for the development of multiple ideas. Therefore, as a materialist approach through the lens of hermeneutics would sustain, it is necessary to take responsibility for the plurality of readings of Jhering's work to adequately capture his ideas. In the absence of "pure" concepts or "pristine" ideas—an idealistic illusion he himself rejected with regard to the legal science—it should not be assumed that a Jhering exists beneath or beyond "the Jherings" handed down to us by tradition. We may instead trace a map of how Jhering's ideas have spread over time and space in order to become aware of the various possibilities that these ideas still may offer to us, understand their limits, and examine the extent to which the author continues to be of interest today.

I have attempted elsewhere to outline this panorama in several European countries and in the United States.[22] However, the lure of Jhering has been such that his ideas have washed ashore in many areas beyond the old continent. I will attempt to briefly describe the introduction and adaptation of his thought in East Asia (Japan and China) and some countries in Latin America. Given the difficulty of accessing much of the pertinent information needed for an exhaustive portrait of this topic, this study seeks merely to provide an approximation. We should first summarize the main hermeneutic currents that can be identified in Jhering's diffusion in Europe to determine whether these readings are repeated beyond the Ural Mountains and the Atlantic Ocean or if new interpretations have arisen.

Yet before going on with this outline, I must draw attention to a last methodological appraisal. There has been a huge discussion about the use of concepts such as "reception", "transfer" or "transplant"—among others—to characterize the circulation of legal institutions and ideas between countries, regions or cultures.[23] Neither language nor historiography are neutral and, therefore, all these expressions are echoes of an ideological background that needs to be exposed. Indeed, the use of these terms —particularly "reception"— has been submitted to criticism because of its colonial connotations. When we speak about the "transfer", the

[20] Kerger (1987) 11-44, 88-97; Merle (2004) 97-113; Gerhardt (2004) 81-95.
[21] Agamben (1995) 116.
[22] Lloredo Alix (2014) 203-250.
[23] See Duve (2012) 52 ff.

"reception" or the "transplant" of a western institution or theory, we are implicitly leading to the idea that such processes are one-directional and require a passive attitude from the "receiver". But this is not what usually happens with the circulation of legal ideas.[24] In most cases, these experience considerable transformations in order to get adapted to the conditions in which they are introduced and acquire new meanings that were not originally intended. This can be verified in every process of cultural translation, but is especially relevant for the understanding of Jhering's diffusion. Even within Europe his thought has acquired multiple significations and has suffered hermeneutical twists which would have probably been disapproved by Jhering himself. However, it is imperative to evade the temptation of seeing a "wrong" or "spurious" interpretation in such cases and be open to the frequently advantageous hybridizations that legal ideas undergo when they travel from one culture to another.

According to that methodological principle, in the following pages I will try to avoid the use of the above mentioned expressions, preferring others like "circulation", "adaptation", "influence" or "introduction". However, in some cases it will be impossible to put aside the traditional term of "reception", because the same jurists who were responsible of translating Jhering's work into their own political contexts adopted the notion of reception. Sometimes they even did it with an explicit colonialist view, assuming Jhering as a tool to "westernize" their legal cultures, which were perceived by themselves as inferior or under-developed.

2. JHERING'S DIFFUSION IN EUROPE: MAIN HERMENEUTIC TRENDS

Jhering's diffusion in Europe has been enormously multifaceted. We can even find an article by José Ignacio Lacasta published in *Euskara*—the Basque language—regarding the relevance of Savigny and our jurist in relation to the problem of nationalism on the Iberian Peninsula.[25] However, despite the existence of some irreducibly original and isolated interpretations, I propose to identify three distinct types of penetration.

First, Jhering has influenced diverse currents and movements that, from their respective geographic and cultural settings, contributed to founding the sociology of law. I refer here to the numerous variants of sociological jurisprudence that blossomed in the first half of the 20th century and that we generically characterize as anti-formalism. In this group we should include the free law movement of the Germanic countries, whose principal representatives Ernst Fuchs, Eugen Ehrlich, and Hermann Kantorowicz explicitly recognized the influence of Jhering. Also in this group are two great exponents of early 20th-century French anti-formalism: Raymond Saleilles and François Gény. The former even cited Jhering on numerous

[24] Losano (2000a) *passim*.

[25] Lacasta Zabalza (1998) 94-98. I would like to thank José Ignacio Lacasta for his kindness in providing me with a Spanish translation of this article.

occasions as a pioneer of the method of comparative law that he would refine and develop.[26] In the same vein, we might mention the sociological jurisprudence of Serguei Muronč ev in Russia, later continued by Nikolai Korkunov and extended in a Marxist sense by the first exponents of Soviet juridical thought: Lev Petrazhitsky and Piotr Stučka.[27] Finally, though without being exhaustive, we might also mention the sociological current headed by Adolfo Posada in Spain, despite all the limitations of his theory as a consequence of the hegemony of the idealist Krausism that dominated Spain in that period.

Second, the conceptualist proposal of the so-called "first Jhering" had an important success as an incentive to develop a modern and "constructive" jurisprudence. In contrast with the legal dogmatics of the past, which was limited to classifying legal notions and institutions with no systematic plan and which received Roman legal material uncritically, without distinguishing the new from the old or the useful from the irrelevant, Jhering's ideas inspired efforts to develop a more refined legal technique. This case applies to the Nordic intellectual Francis Hagerup, who later served as president of the government and who tried to overcome the pragmatic and casuistic thinking of Anders Sandoe Ørsted (the great 19th-century Swedish jurist) in order to construct a legal science with systematic aspirations—something quite removed from traditional Nordic culture.[28] On this point, we could also cite the influence of Jhering among some Russian jurists, such as Nikolai Djuvernua, who tried to eradicate the Mongol and Byzantine legacy of ancient Russian law by importing Roman legal institutions unknown in Slavic culture.[29] Finally, we should note the role of Jhering's dogmatic ideas in the heart of civil and criminal law, where his contributions continue to be relevant, both in the doctrine of *culpa in contrahendo* (pre-contractual liability) and in the discussion with Savigny on the nature of possession for civil law, as well as in his impact to the genesis of the category of wrongfulness for criminal law.[30]

Third, a markedly political interpretation of Jhering's thought emerges in particular from *The Struggle for Law*. Indeed, this treatise has been utilized with surprising frequency by judges, philosophers, and intellectuals in general as a political emblem in defense of diverse causes. At this stage, it is worth highlighting the reading of Leopoldo Alas (known as Clarín), the great representative of the 19th-century naturalist novel in Spain, who encouraged the young Adolfo Posada to translate the text by Jhering and incorporated a truly ardent prologue. For Clarín, at the end of the 19th century, *The Struggle for Law* had to be understood as a battle to protect political ideals from the temptation of the *Realpolitik* to which some members of the Spanish liberal party were succumbing.[31] Similarly but in a different context, the Italian philosopher Benedetto Croce promoted a re-release of Jhering's classic at the peak of fascism. As Clarín did in Spain, Croce proposed a political interpretation of the text but surreptitiously:

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[26] Aragoneses (2009) *passim*.
[27] Cerroni (1977) 52-58.
[28] Modéer (1996) 1153-1158.
[29] Avenarius (2004) 19-20.
[30] Hurwicz (1911).
[31] García San Miguel (1987) 245-283.

given the impossibility of explicitly criticizing the Mussolini regime, Croce suggested reading *The Struggle for Law* as a struggle for international law, one of the last bastions of defense against the advance of totalitarianism. Finally, we could cite the reading by the Swedish judge Andreas Cervin, who also proposed an ethical and political exegesis. With Sweden pressured by Hitler's troops and faced with an entirely delicate case that he had to resolve, Cervin remained unscathed in his defense of legality. His desire to witness this attitude embodied in the proposals of *The Struggle for Law* led him to promote the re-release of the book with his own prologue.[32]

The multiple readings of Jhering's work certainly cannot be fully encapsulated in such simple outline. However, this summary can approximate the secondary literature that emerged in Europe regarding our jurist. I will attempt below to determine whether these hermeneutic currents are repeated in the exegeses in East Asia and Latin America.

3. JHERING IN EAST-ASIAN LEGAL CULTURE

In speaking about East Asian legal culture, I refer only to China and Japan.[33] No information was located that might allow for postulating a hypothetical influence in alternate Asian legal traditions, such as Indian or Islamic law.

3.1 Jhering's Influence in Japan

Aside from Russia, the presence of Jhering in Japan is among the strongest and most persistent in the world. The strength of his influence is apparent because he became a reference point in Japanese legal culture during his own era and was even awarded the Second Class Order of the Rising Sun, a treasured prize usually given to high-level political figures.[34] The persistence of his influence is demonstrated in the continuous translation of his works, not only including emblematic texts such as *Law as a Means to an End*, *The Spirit of Roman Law* or *The Struggle for Law*. Also *The evolution of the Aryan* and *Scherz und Ernst in der Jurisprudenz* are well known in Japan.[35] Moreover, Jhering's ideas continue to spread in our time. For example, countless editions of *The Struggle for Law*, better known in Japan than in any Western country, are used as preparatory material for the study of law and legal science.[36]

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[32] Losano (1998).

[33] Mario G. Losano, in *I grandi sistemi giuridici*, discusses Chinese law and Japanese law as part of the same block. The two legal cultures did develop hand-in-hand until well into the 19th century, and only with the Westernization of Japanese law and the parallel emancipation from Chinese influence would they begin to diverge. See Losano (2000a) 405-408.

[34] Nishimura (1996) 97-109.

[35] Jhering (1894); Jhering (1919); Jhering (1930-1935); Jhering (1950); Jhering (2009). I would like to thank Professor Koji Mizuno (Hokkaido University, Sapporo) for his guidance with regard to the Japanese translations.

[36] Bartels-Ishikawa (2006) 102-103, 112.

To properly understand the process of Jhering's introduction in Japan, it is necessary to revisit the era of the Meiji Revolution. The modern history of Japan can be divided into two main periods, with the first lasting from 1635 to 1868. In this time, the country remained almost entirely isolated from foreign contact. Indeed, during the first third of the 17th century, the spread of Christianity and intensification of trade with the West had begun to erode centuries-old Japanese independence. Facing the dismantling of the feudal system that had been functioning since the 13th century, the Tokugawa clan decided to prohibit foreign travel by the Japanese and ban Europeans from entering the country. This ironclad policy of isolationism, commanded by the powerful Tokugawa family with the consent of various feudal lords (Shoguns), fueled a massive scientific and technological imbalance between Japan and the West.

By the mid-19th century, this status quo could no longer resist the pressure from large colonial powers, driven by the imperialist mentality of the era. Japan was forced to open its borders and sign a series of commercial treaties with Western nations (1853-54). Through these unequal treaties (as they are known in historiography), the Europeans reserved many prerogatives that completely devalued the Japanese Empire and set a course for Japan's subsequent colonization. The main argument used to justify the treaties was based on the profound differences between Western laws and traditional Japanese law. Given this gap, the European powers claimed that Japan was obliged to sign corrective pacts that were actually not intended to balance the purported disequilibrium, but to grant foreigners privileges in terms of the activities they could conduct on Japanese soil. Meanwhile, on the same basis, Japanese tariffs were reduced to risible levels, paving the way for highly unjust trade practices. Both prescriptions—the granting of privileges to Westerners and the reduction of tariffs—were allegedly based on the difference in legal culture and had a decisive effect on modern Japanese history.[37]

Given the concern over increasing foreign penetration and the parallel loss of confidence in the capacity of the Shoguns to control the situation, the feudal system was undermined, favoring the Imperial House, which came to regain a *de facto* political power that it had not possessed for many centuries. By the start of the reign of Emperor Meiji in 1868, a process of renewal was encouraged in all areas of Japanese life, from politics to clothing. In the legal arena, the main agenda of this phase was the abolishment of unequal treaties, since they were perceived as an obstacle that prevented every effort toward national regeneration. For this, a decision was made to rapidly promote the total conversion of the legal structure according to Western models. Japanese leaders believed this process would defeat attempts by colonial powers to justify maintaining their commercial treaties.[38]

The first paradigm applied to the Westernization of the Japanese legal system was French. Inherited from the Napoleonic Code and bolstered by the military success of that nation during the first third of the 19th century, French law appeared to meet all the Japanese re-

[37] Losano (2000a) 415.
[38] Bartels-Ishikawa (2006) 88-97.

quirements for a model. The influence of the French legal system was primarily felt through the jurist Gustave Émile Boissonade (1825-1910), who served as counselor and was the main proponent of various codifying commissions.[39] To him we can attribute the creation of the penal code, the criminal procedural code, and a civil code that would never in fact enter into force. The penal code was crowned with great success, but the criminal procedural code could not function properly, because the administration of justice was not provided with sufficient means and structures and its prescriptions could not be implemented.

The failure of Boissonade's civil code is a key to understanding Jhering's subsequent success. As of the 1870s and as a result of the French defeat in the Franco-Prussian War, the focal point of influence began to shift toward Germany. Divided in support for the English, French and Prussian models, Japanese politicians and jurists increasingly began to identify with the latter model. Amidst this whirlwind of opposing currents emerged the figure of Hermann Roesler (1834-1894), the great architect of the Germanization of Japanese law and author of the commercial code (1890) and the Constitution of 1889.[40] Aside from his work as a legislator, what interests us are his role as an intellectual and government counselor and his profound contribution to the Germanization of Japan. In this climate and largely due to Roesler's prominence, the civil code of Boissonade was thrown into crisis. Still in the period of *vacato legis* and under pressure from Germanophile tendencies, the code was subjected to a radical revision spearheaded by the jurists Nobushige Hozumi, Masaaki Tomii, and Kenjiro Ume.[41]

Jhering's introduction in Japan can be understood in this context. The first translation of *The Struggle for Law*, though partial and never published, was attempted by Amane Nishi (1829-1897), among the most important jurists of 19th-century Japan and an early advocate of legal modernization and controlled introduction of Western models. He was born into a samurai family and sent to study in Europe as a young man to learn about foreign ideas. A devotee of positivism and utilitarianism in philosophy and critical of the excessive weight of morals in traditional Japanese law —though he opposed a mechanical importation of Western rules—he encouraged "precise and detailed" laws and became one of the most influential intellectuals of the century.[42] For unclear reasons, he never finished translating the above mentioned work by Jhering. Despite the minimal influence of this version, it is worth underscoring that the German jurist earned the attention of one of the most prominent 19th-century jurists and intellectuals in Japan who undertook the task of introducing Western law.[43]

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[39] Domingo (2004) 347-349; Losano (1973) 517-667, particularly pp. 559-585. The three counselors mentioned by Losano are Émile Boissonade of France, Hermann Roesler of Germany, and Alessandro Paternostro of Italy.

[40] Bartels-Ishikawa (2007) 25-80; Losano (1973) 537-559. The article by Losano includes a long appendix with commentary on Title I of the Meiji Constitution by Roesler and Hirobumi Ito, then justice minister and responsible for the German turn in Japanese law. The book by Bartels-Ishikawa includes letters and biographical documents of interest regarding Roesler and his legal work in Japan.

[41] Rahn (1990) 91-113.

[42] Minear (1973).

[43] Bartels-Ishikawa (2006) 97-98.

Goro Utsunomiya completed the second Japanese translation of *The Struggle for Law*, which was published in 1894. Although very little is known about this translation, the relevant detail here relates to its accompanying prologues. Two of the three jurists responsible for revising Boissonade's code from the perspective of the new Germanophile tendencies, Nobushige Hozumi and Masaaki Tomii,[44] contributed prologues to Utsunomiya's edition. This date becomes a key to realizing the extent to which Jhering's work generated high-level interest in legal modernization. Besides, the edition by Utsunomiya included two other prologues which are even more notable, at least from the legal-philosophical perspective: one of them by Hiroyuki Kato (1836-1916), a famous jurist who also translated *Allgemeines Staatsrecht* by Johann Caspar Bluntschli, and other one by Iken Kojima (1837-1908), a renowned magistrate who became president of the Court of Cassation.[45]

Kato's importance stems from his status as one of the fiercest Japanese representatives of social Darwinism.[46] Although he was an early supporter of the idea of human rights as derived from natural law, he would later convert to positivism and ultimately defended the opposite position. After the civil rights struggles of the first years of the Meiji period, which jeopardized the traditional hierarchical order, he embraced conservative philosophy. A follower of Herbert Spencer in the political, he defended a legal theory based on the law of the strongest and applied it to the development of societies. According to him, those who are best adapted are destined to survive and exercise hegemony over weaker nations. His ideas are developed in *Der Kampf ums Recht des Stärkeren und seine Entwicklung* (*The Struggle for the Right of the Strongest, and its Evolution*), the title of which is clearly a nod to the treatise by Jhering, which he interpreted from a Darwinist and geopolitical perspective. In fact, in the socio-political context of the struggle against the unequal treaties that Japan had signed with the Western Nations, Kato attempted to rally the Japanese people as a possible Asian power in the style of the geopolitics of "great spaces" that was beginning to percolate among European intelligentsia.[47]

Conversely, the preface by Kojima offered ideas opposed to those of his colleague. First, Kojima rejected the possibility of applying Darwin's ideas beyond the animal kingdom, believing that the evolution of human societies did not conform to the same laws. Second, he proposed interpreting Jhering as a standard bearer of respect for legality. The case of Kojima is interesting because of its similarities to that of the judge Andreas Cervin in Sweden in 1942. As Cervin was hounded by political interference that wished to sway his sentencing

[44] Nobushige Hozumi (1855-1926) was educated in England and was influenced by the evolutionist ideas of Henry Sumner Maine. In Germany, where he would travel two years later, he heard lectures by Rudolf Gneist and Georg Bruns. Masaaki Tomii (1858-1935) was one of the strongest defenders of the Germanization of the code, despite his initial French training. Domingo/Mauleón Muramatsu (2004) 655-657; Jaramillo (2004) 697-699.

[45] Bartels-Ishikawa (2006) 98-100.

[46] Murakami (2006) 53-63.

[47] It might be useful to point out that the Polish jurist Ludwig Gumplowicz (1838-1909), one of the most extreme representatives of social Darwinism, a pioneer of race theory and supporter of the conflictualist legal conception, drafted a laudatory review of the book by Kato. Gumplowicz (1895) 767-768.

in a given direction, Kojima experienced pressure from imperial authorities in a much contested case. An assassination attempt was made against the future Tsar Nicolas II of Russia during his visit to Japan in 1891. Seeking to placate the Russians, with whom diplomatic relations were tense, Japanese authorities sought to condemn the would-be assassin to death even though current laws did not permit such penalty. Then serving as president of the Supreme Court, Kojima decided to rule in accordance with the law despite the intense political pressures to which he was subjected during the trial. This act, which would later be reflected in his reading of Jhering,[48] set an important precedent in affirming the independence of the Japanese judiciary. He has since been praised as a symbol.[49] Thus, we can understand the interpretive shift Kojima imprinted on the work of Jhering. His own struggle for law, perhaps more coherent than that which the German himself envisioned, was the search to safeguard the rule of law as a guarantee of judicial independence and the strength of the political community. This interpretive perspective established the basis for subsequent readings of Jhering in Japan.

Although attempting a comprehensive examination of all editions of *The Struggle for Law* published in the following years would be tedious, it must be pointed out that the importance of this text was particularly related to its proposal for the interdependence of objective law and subjective rights. Consistent with the traditional characteristics of Asian legal culture, no concept of subjective rights existed in 19th-century Japanese law. Therefore, the work of Jhering was extremely appealing. His use of the word right *(Recht)* in both the subjective and objective senses was charged with suggestions and potential for the process of legal renewal facing Japan. In fact, Jhering likely played an essential role in the exportation of this originally Western concept. Given that the traditional vocabulary for discussing law in Japan was linked to the objective sense of the term *(hō, ritsu, rei)* or to the notion of duty *(giri*, *dō*, *jin*[50]*)*, a neologism was needed. After some consideration, the term used was *kenri*, comprised of two parts: *ken* meaning power, and *ri*, meaning interest.[51] Certainly, this solution encompasses the definition of subjective rights by Jhering: "rights are *legally protected interests*."[52]

Jhering's writing has continued to attract enormous interest. After a 1924 translation of *The Struggle for Law* by Tatsuhito Mimura, subsequent versions were released with the spread of European legal philosophy in mind. According to the preface to the 1924 edition and the translations of 1931, 1933, 1949, 1978, and 1982 (two of which were bilingual and designed specifically for high school students considering a career in law), this work's importance has centered on its explanatory potential, its great capacity to condense the nucleus of European conceptions related to legal phenomena, both in regard to private and to public law. The fact that so many versions exist, in some cases with countless re-printings, is symptomatic of Jhering's influence in Japanese legal culture. Indeed, the use of the *The Struggle for Law*

48 Bartels-Ishikawa (2006) 99, 107-108.
49 Dean (2002) 90-96.
50 Minear (1973) 151 ff.
51 Choe (1996) 33.
52 Jhering (1953) 339.

among Japanese law students, for whom it is often used as a preparatory text for beginning knowledge in legal subjects, far exceeds its contemporary popularity in Western countries.[53]

In addition to the success of this work, Jhering's legacy has been bestowed through other channels. First, Jhering also exercised a fairly significant influence in the field of public law. After the promulgation of the 1889 Constitution, drafted by Hermann Roesler under orders from Justice Minister Hirobumi Ito, Japanese authorities sought to learn about constitutional dynamics, that is, how to develop political life under a parliamentary constitution. Accordingly, a delegate named Kentaro Kaneko (1853-1942) was sent to Germany to meet with various political and academic figures and gather advice regarding the proper functioning of the constitutional system. Minister Ito, who had studied in Germany, was fascinated by the theories of public law of Lorenz von Stein (1815-1890) and Rudolf von Gneist (1816-1895), more conservative than the French thinkers popular in the first phase of Westernization.[54] Thus, Kaneko would visit both professors, but Jhering's name was also surprisingly added to the list.[55] This may have been triggered because of the friendship between Kaneko and Taizo Miyoshi, a high-ranking official, magistrate and renowned jurist who was among Jhering's students. In any case, Kaneko held two meetings with the German jurist, whom he visited at his home in Göttingen and from whom he would obtain much important information about parliamentary politics.

After his return to Japan, Kaneko drafted a report detailing the advice from Jhering, which circulated among political circles and was delivered to Minister Ito. The report still exists, and it contains information of great interest for tracking Jhering's ideological biography. A full description of its contents is not warranted here, but the ideas Jhering transmitted to Kaneko were similar to the characteristic 19th-century conservative liberalism (the French *doctrinarisme*). In fact, all the advice was directed toward mitigating the possible radicalization of the parliament against government stability through a careful selection of lifelong senators—designed to achieve proportional representation of all social classes and ages—or through a balanced strategy of "informal" encounters. It appears that the Japanese government valued the indications because Jhering was awarded the Second Class Order of the Rising Sun in 1892, as a gesture of appreciation. Considering that this distinction was typically given only to high-ranking figures and that a proposal to award it to the Prussian justice minister was once rejected, we can conclude that Jhering's contribution was deemed highly significant.[56]

To summarize, the legacy of the German jurist in Japan is very much connected to political and social circumstances, an interpretive trend that is also recognizable in many European countries. The social Darwinist exegesis of Kato, the legalist emphasis of Kojima, the use of *The Struggle for Law* as an entry point into Western legal mentality, and his role as a consti-

53 Bartels-Ishikawa (2006) 100-103.
54 Losano (1973) 530-533.
55 Nishimura (1996) 98-100.
56 Nishimura (1996) 102-103. Kaneko's report is also published as an annex to this article (pp. 106-109).

tutional advisor all speak to the political reading of Jhering's work. Since their first introduction, Jhering's ideas have continued to impact Japanese legal culture, but they have also done so from a scientific perspective. This influence can be observed above all in the work of Takeyoshi Kawashima, the chief bastion of the legal-sociological shift in Japan. Jhering's work appears to have persuaded him to orient his theory in this direction. In addition to *Law as a Means to an End*, Kawashima himself declared that his major influences were Eugen Ehrlich's *Fundamental Principles of the Sociology of Law* (which he translated), *Law and the Modern Mind* by the American realist Jerome Frank, and Marx's *Capital*.[57] Hence, the penetration of Jhering in Japan through the socio-legal current is also noticeable, though it is perhaps less significant than in other contexts.

3.2 Jhering's Influence in China

In light of his notable influence in Japan, Jhering's impact in China appears somewhat tenuous. However, given his relevance in the importation of the concept of subjective right, it is worthwhile to dedicate a few lines to this subject. As in the previous case, toward the middle and end of the 19th century, China had been reduced to a semi-colonial state. Under pressure from the English, China was forced to open its doors to the tragic opium trade, a scourge that caused irreparable damage to the population and affected the national economy for many decades. Once again based on the argument of the imbalance between the Asian and European legal cultures, Western powers imposed a series of blatantly unequal treaties on China that were designed *de facto* to suppress the empire. Thus, similar to the Japanese experience, the abolition of these treaties became a top political objective. However, in contrast with Japan, the process occurred more slowly and with less penetration by Western structures.[58]

Jhering's influence in China can be examined in this context. In 1902, the famous newspaperman, intellectual, and activist Liang Qichao (1873-1929) wrote an essay referring to the recent translation of *The Struggle for Law*.[59] Liang was among the most important personalities of the late 19th and early 20th centuries, both as a philosopher and as a journalist. According to Yang Xiao, he was "the most widely read public intellectual during the transitional period from the late Qing dynasty to the early Republican era".[60] Indeed, Liang played the role of unsparing critic and reformist during the decadent Qing Dynasty (1644-1911), under whose reign China was defeated by England in the two Opium wars and whose political structures were deeply infused with corruption. A supporter of constitutional monarchy and the resurrection of China through the partial importation of Western legal and political models, Liang spent most of his life in exile, working as a journalist.[61] However, he was not the only advocate for European-style modernization; although weakly and in most cases ineffectively,

[57] Rahn (1990) 216-218; Chiba (1976) 145 ff.
[58] Losano (2000a) 405-407.
[59] Angle (2000).
[60] Xiao (2002) 17.
[61] Metzger (2006) 26 ff.

some jurists began to flirt with the possible importation of concepts such as the notion of subjective right, believing these ideas would help re-launch the country politically.[62]

In his essay, *Lun Quanli Sixiang* (*On Rights Consciousness*), Liang sought to convince his countrymen of the need to create a culture of Western-style laws. The Confucian ideal is based on privileging benevolent action over abstract law, moral virtue over legal rule, although not all Chinese history has been monolithically aligned with a Confucian worldview.[63] Facing the traditional idiosyncrasy of Chinese law, in which virtue was viewed as the keystone of social organization, Liang encouraged greater sensitivity to injustice, a more aggressive legal culture and a right-based civil law, instead of the customary duty-based law: "China has three thousand years of legal history; there have been countless legal texts. But there was almost nothing about civil law".[64] That is precisely why he appreciated Jhering's thinking in *The Struggle for Law*. He considered this approach as the only path by which China could overcome its prostrate international position. Consequently, the emphasis was placed on a political reading of Jhering's work. As in Japan, Jhering's text was utilized as a vehicle for incorporating Western ideals into Chinese mentality. Here, too, the concept of subjective right had to be translated using two preexisting ideograms, and once again adapting Jhering's classical definition: *quan*, which means power, and *li*, which means interest, utility, or benefit.[65]

As Angle has noted, this interpretation was permeated with numerous presuppositions inherited from Liang's Confucian education: for example, where Jhering thought of a struggle through procedural channels, Liang saw a moral battle.[66] However, this characteristic does not impugn the radical modernity of Liang's proposal. In fact, despite the Confucian baggage that is apparent in many passages, other portions seem to have assumed the conflictual essence of Jhering. That is why Liang insisted on the need to cultivate a certain aggressiveness in order to properly defend our rights. In the face of the traditional emphasis on social peace as a supreme social good, Liang attempted to promote a radical change in Chinese legal consciousness in his era. This consciousness was changed over the course of decades, and above all, as a consequence of the galloping Westernization suffered around the world since the penetration of globalization. In this context, a slow transformation has taken place in Chinese law, which has adjusted more to European legal institutions.[67] This may explain the renewed interest in Jhering. In this sense, it is worth mentioning the contribution of Chun-Tao Lee, who translated *Ist die Jurisprudenz eine Wissenschaft? (Is Jurisprudence a Science?)*

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62 Svensson (2002) 75 ff.

63 In addition to Confucianism, there has also been a proliferation of legalist schools, whose touchstone is strict obedience of laws. As a result of the antagonism between these two philosophical directions, Chinese traditional law is comprised of two basic principles: *lǐ* (moral precept) and *fǎ* (legal precept). See Losano (2000a) 408. As a paradigmatic example of the legist approach, see Han (1998).

64 Liang (1999) 1311.

65 Choe (1996) 33.

66 Angle (2000) 251 ff.

67 Glenn (2010) 319 ff.

in 2010 and published an interesting monograph in 2015 on the notion of property in Jhering's work, attempting to identify the links between his legal-dogmatic constructions and his philosophical ideas.[68]

4. JHERING IN LATIN AMERICAN LEGAL CULTURE

Jhering's introduction in Latin America has varied in different national contexts. His ideas had considerable influence in Brazil but less influence on the rest of the continent. On the other hand, Jhering's works were embraced in Brazil during the 19th century but were received later in the Spanish-speaking countries of Latin America.

4.1 Jhering's Influence in Brazil

Jhering was introduced in Brazil in the most interesting of ways. The principal author of his importation was Tobias Barreto (1839-1889), one of the most prominent jurists in Brazilian history. Barreto was a humanist in the classic sense of the word. Feverishly active as a political journalist, founder of the Colegio de Humanidades in the city of Recife, a poet and literary critic, and even a provincial deputy for Pernambuco, he made history as well for his legal achievements. One of his central obsessions stemmed from this interdisciplinary training: the creation of a national education system for law and the development of a humanistic legal culture simultaneously far from naturalist scholasticism and critical of the excessively practical tendencies of legalism.[69] In this spirit, he promoted the merger of legal science with the natural sciences, encouraging the sociologization of legal philosophy and thus promoting a tendency which would blossom along the following decades. In fact, the orientation of Miguel Reale, the famous 20th-century Brazilian legal philosopher who sought to integrate the ethical, social, and normative dimensions of law—his so called tridimensional theory of law—is derived in large part from these theoretical foundations.[70]

As a public figure, Barreto defended the constitution of Republican Brazil, based on liberty and social justice, as well as the abolition of slavery. As a theoretical jurist, he was the founder of the Recife School, a movement of jurists determined to renew national law on the grounds described above. This school became fundamentally relevant both because it disseminated a culturalist spirit for the comprehension of law and also because it educated a man who would later emerge as the author of the Brazilian civil code, Clóvis Beviláqua (1859-1944).[71] The liberal and partially socializing flavor of Brazilian codification probably

[68] Lee (2015).
[69] Paul (2001) 65-66.
[70] Reale (1977) 225 ff.
[71] Poveda (2004) 728-730.

stemmed from this initial training.[72] Furthermore, the transcendence of the Recife School—and of Barreto in particular—is related to the importation of emerging European currents of thought. From this perspective, Barreto's contribution was key to the closeness between Brazilian culture and the most innovative ideas of the era, particularly from Germany.[73]

Barreto's fascination with German culture was truly unusual. He never traveled to Germany but learned German independently using a grammar book and a dictionary. Thus despite dominating the written language perfectly to the point of performing advanced translations, he was incapable of speaking.[74] The impulse that moved him to pour his heart and soul into the study of the German language and culture was philosophical in nature, given that he so greatly admired its intellectual contributions. He was fascinated with the works of the famous German Darwinist Ernst Haeckel and with jurists like Rudolf von Jhering or Albert Hermann Post. In all these cases, Barreto was particularly appealed by the positivistic-evolutionist perspective and by the rejection of natural law. His deep-rooted Germanism even encouraged him to edit a journal in German—*Deutscher Kämpfer*, with almost no success— and to publish several works in that language: *Brasil wie es ist in literarischer Hinsicht*, *Ein offener Brief an die deutsche Presse* and *Rechtsleben und Rechtsstudium in Brasilien*.[75]

The role of cultural Germanization in Brazil is similar to its role in Japan, since also in Brazil the French influence had taken place previously. Indeed, the motto of the Brazilian flag, "Order and Progress," was literally appropriated from the positivistic ideas of August Comte. These ideas had been so dominant during the first half of 19th century, that even a project of founding a "positivist church" was tried to put into practice according to the proposal of Comte's most conspicuous follower, Émile Littré.[76] In this way, the Germanization promoted in Recife implied shifting the focus of attention, a change which occurred simultaneously with the political transformations in Europe —that is, after France's defeat in the Franco-Prussian war— affording an ever greater role to triumphant Germany.

Due to this interest, Barreto encountered the works of Jhering, whose ideas he would become responsible for bringing to the country. In fact, Barreto became the spokesperson of Jhering in Brazil, similar to Sergey Muronč ev in Russia or Roscoe Pound in the United States. First, Barreto proposed an evolutionistic reading of the German jurist, positioning him as a privileged representative of legal Darwinism. The ideas of Jhering helped him strengthen his will to marry the natural sciences and the science of law,[77] a task upon which he had embarked with the intention of sociologizing jurisprudence in a positivist sense. Second, Barreto was very influenced by *Law in Daily Life*, a small book of practical cases Jhering had gathered for instructive purposes. Written to alter the traditional approach to teaching law and introduce practical talent as opposed to the academicist formalism of Jhering's col-

72 Guzmán Brito (2006) 307-320.
73 Losano (1974).
74 Losano (2000b).
75 Mercadante & Paim (1972).
76 Varejão (2005).
77 Losano (1996) 81-82.

leagues, this short text made a significant impression on the Brazilian jurist, who took it as encouragement to build a realist conception of law. Thus inspired by this objective, he aimed to disseminate the work among his compatriots, completing a partial translation of the cases that were most applicable to his forensic work or best adapted to Brazilian socio-political realities.[78]

Barreto also became familiar with *Law as a Means to an End*, a book that he often cited and upon which he based his ideas of legal and cultural regeneration.[79] In this work, he perceived the pragmatic spirit of the law that emerged in Jhering's later convictions, the tendency toward sociology that he also sought in his own thinking, and in general, an example of how to integrate legal, ethical, political, and social issues. In particular, Barreto was deeply admired for his sociological explanations of the origins of morals that Jhering specified in the second volume of *Law as a Means to an End*, a typically positivist and anti-metaphysical approach that pleased the Brazilian enormously. Barreto's trajectory can indeed be understood under the aegis of positivism: he was marked at first by his French education in which he moved from a more spiritualist moment to a positivist one; he became enthusiastic about Darwinism in a second phase; and he explored neo-Kantism in a third phase.[80] Despite the diverging nature of these orientations, they shared the common element of positivism, understood in the broadest sense.[81] From this standpoint, Jhering's ideas provided a loyal ally, since also he had moved from one pole to another, exploring the different alternatives that positivist culture left in his path.

Although Barreto was the greater promoter of Jhering in Brazil, the influence of the German jurist continued after him. Due mainly to the jurists of the Recife School and as a way to prepare the country for the arrival of the civil code, a significant introduction of Jhering's works took place along the last decade of 19th and the first half of 20th century. Subsequent translation efforts were spearheaded by Clóvis Beviláqua, who completed the first translation of one of Jhering's works into Portuguese, *Hospitalidade no Passado*, in 1891.[82] This writing was a brief historical-anthropological exploration of the concept of hospitality in antiquity, which enjoyed a certain prestige in 19th-century Italy, though it was not widely distributed in Germany or abroad. The next work by Jhering translated into Portuguese was *O fundamento dos interdictos possessorios* in 1900 by Adherbal de Carvalho with a study by Joseph Duquesne.[83] Other aspects of Jhering's work beyond his efforts as a civil scholar and historian soon became known. *The Struggle for Law* was translated again in 1910, this time with a preface by Beviláqua.[84] Although it was published in Oporto, the presence of the great Brazilian writer leaves no room for doubt about the importance of Jhering in this South

78 Barreto (1989-1991) I, 66-72.
79 Losano (1996) 90-94.
80 Losano (1996) 95-96.
81 Kolakowski (1974).
82 Jhering (1891).
83 Jhering (1908).
84 Jhering (1910).

American country. Next, *The Spirit of Roman Law* was translated in 1942, one of few foreign full versions of this book, with a new prologue by Beviláqua.[85] Finally, a volume of essays was released in 1955 with the title *Questões e estudos de dereito*, also introduced by Beviláqua *("Algunas palabras sôbre Rudolf von Jhering")* and including various short works by the jurist.[86]

To summarize, the deep penetration of Jhering's ideas can certainly be observed in Brazilian legal culture, which began with the initial introduction by Tobias Barreto but that continues to the present. Jhering combined three primordial interests. First, his works served as a bridge between German and Brazilian legal culture, as a type of transmission channel. Second, he established the bases for the sociological orientation of Brazilian legal thinking, a trend that began with Barreto and continued through Miguel Reale in 20th century. Finally, Jhering's ideas encouraged the legal renovation of the country, as occurred in Japan. Thus, Beviláqua's interest in this jurist is quite revealing. In addition to the legal-dogmatic interest of Jhering's contributions, the impact of his ideas in Brazil relates to the generation of a legal culture that was meant to go beyond the legal surface and to penetrate mindsets. It is interesting to read Beviláqua himself, who at the end of the 19th century was conscious of the success that Jhering had sowed in Japan and admired how the Asian country had successfully modernized its legal structures.[87] He believed that the same regeneration was occurring in Brazil and that the German jurist had played a key role in it:

> In regard to our country, I can attest that we owe to Jhering and to Hermann Post, among the foreign jurists, the principal act of transformation that has withdrew from legal science that taciturn tone of the medieval song, that suffocating scent of mold, which once banished jurisprudence from the avid curiosity of the young. Once a rancid discipline—though with rare emergences of fresh air—looked upon by young people with distrust, thanks to these thinkers the law has become an attractive subject which makes wakeful nights pass more swiftly.[88]

4.2 Jhering's Influence in Spanish-Speaking Latin America

As stated previously, Jhering's influence in the Spanish-speaking countries of Latin America was not comparable to his sizeable influence in Brazil. However, it is worthwhile to highlight some relevant instances of the spread of his ideas in these countries.

In Chile, Jhering's ideas had a significant impact on Valentín Letelier, who maintained a friendship with the Spanish Adolfo Posada, to whom we owe most of Jhering's translations. Both jurists took an interest in history, sociology, and pedagogy,[89] and both were involved in a positivism destined to revoke natural law tradition without renouncing the ethical approach to law, with a very strong awareness of the importance of education and convinced of the need to reinvent the legal method in a sociological sense. In a certain way, Letelier played

[85] Jhering (1943).
[86] Jhering (1955).
[87] Beviláqua (1897) 63-64.
[88] Beviláqua (1897) 83.
[89] Posada (1906).

a role similar to sociological and antiformalist currents in Europe. In the first phases of his intellectual trajectory, Letelier was influenced by the works of Comte and Littré, fathers of French sociology and principal representatives of philosophical positivism, who, as previously indicated, played a major role in 19th-century Brazil.[90] However, he later became interested in German texts. Letelier's love for the contributions of German pedagogy and sociology garnered some debate among his countrymen, who reproached him for wanting to import foreign models ill-adapted to Chilean reality. In response to such accusations, he wrote an ironic essay entitled "The Teutonic Invasion," which explains his interest in the new German pedagogical trends:

> They speak of our Germanization as if we were made of wax, moldable to the will of the authors, and do not realize that to defend ourselves from forty or fifty German pedagogues, we have the help of just as many French professors… The Germanization of teaching consists essentially of changing mechanic study with rational study, the deductive route with the inductive, and this change that emancipates us from the pedagogy of the Jesuits, is not an ill to be feared; it is the progress we should desire.[91]

Beyond his educational theories, the German influence was also felt in Letelier's works on sociology and legal history. In particular, this mark is visible in his two great treatises of the first third of the 20th century: *Génesis del Estado y de sus instituciones fundamentales [Genesis of the State and its Main Institutions]* (1917) and *Génesis del derecho y de las instituciones civiles fundamentales [Genesis of the Law and Civil Main Institutions]* (1919). These are evolutionist works in which Letelier attempted to explain the social origins of law using a historiographic and anthropological approach and making frequent reference to Jhering, particularly his *Spirit of Roman Law* and *The Evolution of the Aryan*.[92] In addition to historiographic contributions, Jhering's ideas also affected the legal philosophy of the Chilean intellectual. In general, Letelier adopted the antiformalist focus: the idea that the law is neither simply those statutes officially established by the State nor written acts alone. Letelier wrote: "Jhering correctly observes that there is a difference between the law as the way of being of society, and the formula of law, that is the laws."[93] On this point, Jhering's proposal does not depart much from that of his predecessor Savigny or other anthropologists of the era such as Sumner Maine, whom Letelier also cites abundantly. However, later on that text, the Chilean jurist subscribed to the thesis of the "second Jhering," concluding that legislation and conscious acts of policy can also intervene in society, satisfying needs that the spontaneous course of custom would not be capable of protecting.[94]

Apart from Jhering's presence in the work of Letelier, no systematic introduction of the German thinker comparable to that observed in Brazil or Japan occurred in Chile. Isolated mentions of the doctrine of possession appear in the works of Arturo Alessandri or Luis Claro Solar—among the greatest Chilean lawyers of 20th century—and circumstantial evi-

[90] Fuenzalida Grandón (1942) 73-89.
[91] Letelier (1895) 443.
[92] Letelier (1967) *passim*.
[93] Letelier (1999) 247.
[94] Letelier (1999) 282-284.

dence suggests that other jurists and positivist intellectuals of the era such as José Victorino Lastarria or Juan Enrique Lagarrigue may have known of Jhering. However, the recuperation of Jhering's legacy could not be detected in Chilean legal philosophy until well into the 20th century. Hence, it is worth mentioning the volume of essays dedicated to Jhering by the Faculty of Law of Valparaíso between 1976 and 1977, coordinated by Agustín Squella and with essays by famous philosophers such as Jorge Millás.[95] Jhering has once again been championed by Fernando Atria today, but in an opposite sense to the previous case: what Atria revived of the German jurist are some of his favorable reflections on formalism in *The Spirit of Roman Law* or the need for formal rigidity in the law as a guarantee of freedom. This type of focus on Jhering is a departure from all the other interpretations discussed until now, which overwhelmingly emphasized the second phase of his thinking and his antiformalist position.[96]

Returning to the beginning of the 20th century, the introduction of our author in Spanish-speaking Latin America most likely occurred through Spanish jurists. The Americanist policy of attempting to forge academic ties with the young nations of the Americas and restore Hispanic ties with a tone of reciprocity was a pursuit of the University of Oviedo faculty[97], where the famous jurists Adolfo Posada or Rafael Altamira worked at the moment. This policy materialized in many strategies and proposals but initially translated into two important trips to South America, the first undertaken by Rafael Altamira between 1909 and 1910[98] and the second by Adolfo Posada in 1910. Posada would again travel to Argentina in 1921.[99] Both jurists established connections with political and intellectual figures in Latin America, and wrote essays about the need of restoring cultural ties with the former colonies. To that end, they created an Americanist chair at the Universidad Central (now Universidad Complutense), a research and teaching center headed by Altamira during his entire career, even during civil war and exile.[100]

Regardless of this wonderful period in Spanish and American intellectual history, which cannot be explored here, I am interested in highlighting the possibility that Jhering was introduced through these channels. Note that Oviedo's group became the main way of introduction of Jhering in Spanish legal culture. Besides, the most active in this process was Posada, whom we already found when speaking about Letelier. From this perspective, the idea that the spread of Jhering's ideas in Spanish-speaking Latin America were mostly due to Posada does not seem absurd. In fact, one figure with whom Posada and Altamira established contact was Octavio Bunge (1875-1918), one of the great exponents of Argentine social Darwinism, whose work had a great influence throughout the continent and bears traces of the influence of Savigny or Jhering. Some Spanish translations of Jhering were also originally published in

95 Squella (1976-1977).
96 Atria (2004).
97 Prado (2008) 197 ff.
98 Altamira (2007).
99 Posada (1986).
100 Altamira (1933).

Argentina, such as *Posesión del corpus possessionis*[101] or *Del interés en los contratos,*[102] the latter by Posada. Later, toward the mid-20th century, the famed Argentinian lawyer Rafael Bielsa published a rare text describing and comparing the figures of several jurists and politicians: Sarmiento, Costa, Jhering and Marshall.[103] Finally, we should highlight Jhering's influence on one of the great Argentine legal philosophers of the 20th century, Enrique Marí. The German jurist is one of the most frequently cited authors in Marí's book, *La interpretación de la ley*, particularly in the lengthy section dedicated to the finalistic interpretation of law, in which Jhering shares center stage with a number of representatives of the antiformalist wave: François Gény, Hermann Kantorowicz, and Philipp Heck (who were also largely followers of Jhering).[104] Despite this late resurgence, I do not believe that one can speak of a remarkable influence of Jhering's ideas in Argentina.

Jhering experienced a more noteworthy influence in Peru, where he was introduced toward the beginning of the 20th century from an essentially legal-dogmatic perspective, which caused his philosophical ideas to be mostly disregarded. The responsible of Jhering's influence in Peru is José León Barandiarán, among the greatest Peruvian jurists of the 20th century. León's ideas were still marked by natural law, although he had a perspective already distanced from the ancient Thomist constructions and closer to the so called "historic" or "variable" natural law we can find in figures such as Rudolf Stammler. This open conception of natural law explains why León's thought was characterized by his sensitivity to the sociological currents that were developing in the mid-20th century, in particular toward the Jheringian legal method that was in the background of all those theoretical movements. His reading of Jhering relates mainly to the domain of civil law and was marked by the desire to construct a new legal dogmatics capable of overcoming the mechanical and legalist approach of the French *École de l'exégèse*, which still dominated the jurisprudence in Peru at the beginning of the century.[105] León turned to the German doctrine, which he deeply admired. In fact, his veneration of German culture led him to publish an elegiac commentary on the Weimar Constitution in which he celebrates the achievement of social democracy in reconciling capital and labor[106] and also to spend three years in Germany for research. During that time, he became familiar with the sophisticated doctrine that was being produced under the aegis of German civil code, which descended from 19th-century jurisprudence of concepts (*Begriffsjurisprudenz*). Hence, his contribution consisted of introducing in Peru an extremely refined legal dogmatics. Not for nothing, Carlos Ramos called León an "esthete of dogmatics".[107]

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101 Jhering (1922) 48-55.
102 Jhering (1947).
103 Bielsa (1940).
104 Marí (2014). This book brings together works from the late '80s, which Marí was never able to see edited together.
105 Ramos núñez (2011) 46 ff.
106 León Barandiarán (1930).
107 Ramos Núñez (2011).

Accounting for the three elements highlighted in the previous paragraph—the fondness for sociology, a political sensitivity toward the socialization of law, and the German training—we can understand why León Barandiarán appreciated Jhering's work. In some ways, these three concerns all come together in Jhering: the legal-civil vein that is also a humanistic one; the sociological and interdisciplinary approach to law that the German jurist cultivated throughout his career; and finally, the deep conviction that the law and its institutions should serve social purposes and needs. This approach led him to adopt a critical view of liberal law and defend a civil doctrine that would address problems derived from the social question:

> Within an orthodox conception of the efficacy of the autonomy of will, it is very difficult to allow modification in the terms in which the contract is expressed. However, this point of view has today been overcome, since it corresponds to an individualist understanding of the law, which has to be limited and must depend on the imperatives of social interest. Hence the mere individual will expressed in a contractual act cannot be considered as capable of engendering rights and correlative obligations that threaten the recommendations of equity and good faith.[108]

Finally, it is essential to highlight efforts to spread Jhering's work in Mexico. It is here that the two volumes of *Law as a Means to an End* were first published in Spanish translation by Diego Abad de Santillán.[109] The story of Abad de Santillán, one of the most famous Spanish anarchists of the 20th century, is incredibly hectic. He was born in León in 1897 and died in Barcelona in 1983, but spent his life in Spain, Argentina, Mexico and Uruguay, taking part in the workers' struggle from a very young age and combining his political commitment with extensive intellectual work. He worked as a carpenter, blacksmith, bricklayer and peasant, was jailed because of his active participation on the great Spanish strike of 1917, and later became Cataluña's Regional Minister of Economy in 1936.[110] He wrote numerous essays on anarchism and was also a great translator of libertarian works. What Wenceslao Roces did for the work of Marxist thinkers, Santillán did for the anarchists. To him are owed many important translations of Bakunin, Proudhon and Malatesta.[111]

Beyond these aspects, it is interesting to examine Santillán's role in promoting Jhering. Not only did he translate *Law as a Means to an End*, he also produced the second Spanish translation of *The Struggle for Law*—the first had been completed by Posada still in 19th century—and published it in Mexico in 1957 with a new prologue by himself, incorporating Clarín's classical preface as an appendix.[112] Although barely known in Spain, this translation is important because it served to spread Jhering's ideas in Mexican legal culture from a new point of view. As Benedetto Croce in Italy or Andreas Cervin in Sweden had done, Santillán undertook a political reading of this treatise. However, consistent with his ideological posi-

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[108] León Barandiarán (1934) 60. I would like to thank Carlos Antonio Agurto for his valuable indications with regard to Jhering's influence in Peru.

[109] Jhering (1957a). There was already a partial and inaccurate Spanish translation of the first volume of *Law as a Means to an End* from 19th century, which nonetheless found a very scarce distribution.

[110] Cappelleti (1992); Abad de Santillán (1977).

[111] Rivaya (2000); Mintz/Fontanillas (1993) 175-182.

[112] Jhering (1957b).

tion, he interpreted *The Struggle for Law* in a libertarian light. Written in the context of the Cold War, Santillán's prologue calls us to rebel against the arms race and assume an individual struggle against the impositions of power and the psychosis of State's Authoritarianism:

> Our world is experiencing a deep crisis of all spiritual values; a dangerous setback is observed in the constitution of morals and customs, both for the individual and the collective; people do not live nor struggle for their rights and for law with the vigor and fervor deserved by the higher purposes of man and society [...]. Today, the world does not move to save millions of lives, whole peoples from massacres or genocides. This insensitivity in the face of injustice is the most dismal symbol of our time and it will not be overcome easily. For all those who do not see in justice a mere codified formalism, but an essential pillar of existence, contact with the ideas of Ihering [sic] offers fertile perspectives, promising paths for recuperation and faith. This great teacher belongs to the other Germany, the one that was deliberately ignored and contorted in favor of a recent ghastly collective psychosis, the Germany of Kant, Lessing, or Herder, among so many others, that continues to be luminous and uplifting.[113]

Meanwhile, in his ethical and libertarian diatribe against the violence of the State, Santillán compares the statist Jhering with anti-statist Henry David Thoreau or with the call to resistance against despotism by Étienne de la Boëtie:

> These unforgettable pages can be read and meditated on together with that other jewel by Étienne de la Boëtie, *Discourse on Voluntary Servitude*, or that essay by Thoreau, *On the Duty of Civil Disobedience*. With very diverse arguments and apparently contradictory orientations, they have the common denominator of seeking arouse in man the breath of the struggle for his dignity and his personality.[114]

The comparison is undoubtedly unfocused, given that these two authors designed their work as a battering ram against the power of the State: the liberal State in the case of Thoreau and the Absolutist State in Boëtie's case, whereas Jhering was a strong supporter of a powerful and highly bureaucratic State. However, we encounter a coincident distrust of institutional power both in Thoreau and in Boëtie. In fact, Thoreau has frequently been employed by contemporary neoliberalism, which invokes his famous phrase "the best government is that which governs least," whereas Boëtie's ideas have been reasserted in several currents of anarchist thought[115]. Regardless of Santillán's degree of loyalty to the original ideas of Jhering, we again collide with an interesting political reading of the work of the German thinker—a constant theme that we have observed throughout the preceding pages.

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113 Abad de Santillán (1957) 9-10.
114 Abad de Santillán (1957) 11.
115 Peces-Barba, Gregorio (1978) 45-52.

BIBLIOGRAPHY

Abad de Santillán, Diego (1977), Memorias 1897-1936, Barcelona

Agamben, Giorgio (1995), Homo sacer. Il potere sovrano e la nuda vita, Torino

Altamira, Rafael (1933), La enseñanza de las instituciones de América, Madrid

Altamira, Rafael (2007), Mi viaje a América. Libro de documentos, Oviedo

Angle, Stephen C. (2000), Should We All Be More English? Liang Qichao, Rudolf von Jhering and Rights, in: Journal of the History of Ideas 61/2, 241-261

Aragoneses, Alfons (2009), Un jurista del modernismo. Raymond Saleilles y los orígenes del derecho comparado, Madrid

Atienza, Manuel (2013), Curso de argumentación jurídica, Madrid

Atria, Fernando (2004), La ironía del positivismo jurídico, in: Doxa. Cuadernos de filosofía del derecho 27, 81-139

Avenarius, Martin (2004), Rezeption des römischen Rechts in Rußland. Dmitrij Mejer, Nikolaj Djuvernua und Iosif Pokrovskij, Göttingen

Barreto, Tobias (1989-1991), Jurisprudência da vida diária, in: Barreto, Tobias, Edição comemorativa I, Rio de Janeiro-Aracaju, 66-72

Bartels-Ishikawa, Anna (Ed.) (2007), Hermann Roesler. Dokumente zu seinem Leben und Werk, Berlin

Bartels-Ishikawa, Anna (2006), El éxito del Kampf um's Recht de Jhering en Japón, especialmente en el periodo Meiji, in: De Lucas, Javier, Peces-Barba, Gregorio et al., El Derecho en red. Estudios en homenaje al profesor Mario G. Losano, Madrid, 87-112

Beseler, Georg (1843), Volksrecht und Juristenrecht, Leipzig

Beviláqua, Clóvis (1897), Juristas Philosophos, Bahia

Bielsa, Rafael (1940), Algunos perfiles de políticos y juristas. Sarmiento, Costa, Ihering y Marshall, Santa Fé

Bloom, Harold (1995), El canon occidental. La escuela y los libros de todas las épocas, trad. de Damián Alou, Barcelona

Brentano, Franz (1955), Vom Ursprung sittlicher Erkenntnis, Hamburg

Calvino, Italo (2013), ¿Por qué leer a los clásicos?, in: Sainte-Beuve, Charles-Augustine, Calvino, Italo y Borges, Jorge Luis, ¿Qué es un clásico?, Bogotá

Cappelleti, Ángel J. (1992), Autopercepción intelectual de un proceso histórico, in: Anthropos (Diego Abad de Santillán. Un anarquismo sin adjetivos. Una visión crítica y actual de la revolución social), 138, 10-15

Cerroni, Umberto (1977), El pensamiento jurídico soviético, trad. de Virgilio Zapatero y Manuel de la Rocha, Madrid

Chiba, Masaji (1976), Giappone, in: Treves, Renato e Ferrari, Vincenzo (a cura di), L'insegnamento sociologico del diritto, Milano

Choe, Byoung Jo (1996), Der Kampf ums Recht im traditionellen Korea. Die konfuzianische Ideologie und die Wirklichkeit, in: Behrends, Okko (Hrsg.) Jherings Rechtsdenken. Theorie und Pragmatik im Dienste evolutionärer Rechtsethik, Göttingen

Contreras Peláez, Francisco (2005), Savigny y el historicismo jurídico, Madrid

Dean, Meryll (2002), Japanese Legal System, 2nd ed., London

Domingo, Rafael, Mauleón Muramatsu, Aiki (2004), Nobushige Hozumi, in: Domingo, Rafael (Ed.), Juristas universales 3, Barcelona-Madrid, 655-657

Domingo, Rafael (2004), Gustave Émile Boissonade, in: Domingo, Rafael (Ed.), Juristas universales 3, Barcelona-Madrid, 347-349

Duve, Thomas (2012), Von der europäischen Rechtsgeschichte zu einer Rechtsgeschichte Europas in globalhistorischer Perspektive, in: Rechtsgeschichte / Legal History. Zeitschrift des Max-Planck-Instituts für europäische Rechtsgeschichte 20, 18-71

Fuenzalida Grandón, Alejandro (1942), Don Valentín Letelier y su labor intelectual, in: Anales de la Universidad de Chile 45-46, 73-89

García San Miguel, Luis (1987), El pensamiento de Leopoldo Alas "Clarín", Madrid

Gerhardt, Volker (2004), Schuld, schlechtes Gewissen und Verwandtes (II 4-7), in: Höffe, Otfried (Hrsg.), Zur Genealogie der Moral, Berlin

Glenn, H. Patrick (2010), Legal Traditions of the World. Sustainable Diversity in Law, 4th ed., Oxford

Gumplowicz, Ludwig (1895), Der Kampf ums Recht des Stärkeren und seine Entwicklung, in: The Annals of the American Academy of Political and Social Science 5, 767-768

Guzmán Brito, Alejandro (2006), Historia de la codificación civil en Iberoamérica, Navarra

Han, Fei Zi (1998), El arte de la política. Los hombres y la ley, trad. de Yao Ning y Gabriel García-Noblejas, Madrid

Hauser, Arnold (1978), Historia social de la literatura y el arte, vol. 1, trad. de A. Tovar y F. P. Varas-Reyes, 14th ed., Barcelona

Hurwicz, Elias (1911), Rudolf von Jhering und die deutsche Rechtswissenschaft. Mit besonderer Berücksichtigung des Strafrechts, Berlin

Jaramillo, Marcos, Masaakira Tomii, in: Domingo, Rafael (Ed.), Juristas universales 3, Barcelona-Madrid, 697-699

Jhering, Rudolf von (1891), A hospitalidade no pasado, trad. portugueza permitida pelo auctor e precedida de uma noticia sobre o mesmo por Clóvis Beviláqua, Recife

Jhering, Rudolf von (1894), 權利競爭論 (Der Kampf ums Recht), transl. Goro Utsunomiya, Tokyo

Jhering, Rudolf von (1908), O fondamento dos interdictos possessorios, com um appendice contendo o estudo sobre o "Corpus possessionis" do autor, e uma crîtica da theoria possessoria do mesmo pelo Dr. Joseph Duquesne, trad. de Adherbal de Carvalho, Rio do Janeiro

Jhering, Rudolf von (1910), A luta pelo dereito, trad. de José Tavares Bastos, préfacio de Clovis Bevilacqua, Porto

Jhering, Rudolf von (1919), 欧洲民族文化史 (Vorgeschichte der Indoeuropäer), transl. Inoue Kinji, Tokyo

Jhering, Rudolf von (1922), Posesión del corpus possessionis, in: Revista del Círculo de Escribanos 8, 48-55

Jhering, Rudolf von (1930-1935), 法律目的論 (Der Zweck im Recht), Tokyo

Jhering, Rudolf von (1943), O espíritu do dereito romano nas diversas fases do seu desenvolvimento, trad. de Rafael Benaion, préfacio de Clóvis Bevilacqua, Rio de Janeiro

Jhering, Rudolf von (1947), Del interés en los contratos, trad. directa del alemán, revisada y corregida por Adolfo G. Posada, Buenos Aires

Jhering, Rudolf von (1950), ローマ法の精神 (Der Geist des römischen Rechts auf den verschiedenen Stufen seiner Entwicklung), Tokyo

Jhering, Rudolf von (1953), Geist des römischen Rechts auf den verschiedenen Stufen seiner Entwicklung, III, Darmstadt

Jhering, Rudolf von (1955), Questões e estudos do dereito, préfacio de Clóvis Bevilacqua, trad. de J. Vieira Araujo, Clóvis Bevilacqua e Adherbal de Carvalho, Bahia

Jhering, Rudolf von (1957a), El fin en el Derecho, trad. y pról. de Diego Abad de Santillán, Puebla (México)

Jhering, Rudolf von (1957b), La lucha por el derecho, trad. y pról. de Diego Abad de Santillán, con el pról. a la 1ª ed. cast. de Leopoldo "Alas" Clarín, México-Lima-Buenos Aires

Jhering, Rudolf von (1971), An den Fürsten Bismarck (Karlsbad, den 15. September 1888), in: Ehrenberg, Helene (Hrsg.), Rudolf von Jhering in Briefen an seine Freunde, Aalen, 442-444

Jhering, Rudolf von (2008), Sobre el nacimiento del sentimiento jurídico, ed. y trad. de F. Fernández-Crehuet, Madrid

Jhering, Rudolf von (2009), 法学における冗談と真面目 (Scherz und Ernst in der Jurisprudenz), transl. Sanada Yoshiaki & Yazawa Hisazumi, Tokyo

Kelsen, Hans (1913), Rudolf von Jhering in Briefen, in: Neue Freie Presse, N. 17423, 23/II/1913

Kelsen, Hans (1984), Hauptprobleme der Staatsrechtslehre (Entwickelt aus der Lehre vom Rechtssatze), Neudruck der 2. Aufl., Darmstadt

Kerger, Henry (1987), Autorität und Recht im Denken Nietzsches, Berlin

Kolakowski, Leszek (1974), La filosofia del positivismo, trad. de Nicola Paoli, Roma-Bari

Lacasta Zabalza, José Ignacio (1998), Savigny eta Iheringen artean (ez duzu Savignyren izena ahotan alferrik hartuko), in: Euskal Herriko legelarien aldizkaria 3, 94-98

Lee Chun-Tao (2015), Jherings Eigentumsbregriff. Seine römisch-rechtlichen Grundlagen und sein Einfluss auf das BGB, Baden-Baden

León Barandiarán, José (1930), La Constitución alemana de 1919, Lima

León Barandiarán, José (1991-1997), Tratado de derecho civil peruano, Lima

Letelier, Valentín (1895), La invasión teutónica, in: La lucha por la cultura. Miscelanea de artículos políticos y estudios pedagójicos, Santiago de Chile

Letelier, Valentín (1967), Génesis del derecho y de las instituciones civiles fundamentales, Santiago de Chile

Letelier, Valentín (1999), Teoría general de la génesis y del desarrollo del derecho, in: Revista de derecho y humanidades 7, 243-299

Liang Qichao (1999), On Rights Consciousness, transl. by Stephen Angle, in: William Theodore de Bary, Wing-tsit Chan, and Richard John Lufrano (Eds.), Sources of Chinese Tradition, New York

Lloredo Alix, Luis (2012), Rudolf von Jhering y el paradigma positivista. Fundamentos ideológicos y filosóficos de su pensamiento jurídico, Madrid

Lloredo Alix, Luis (2014), La recepción de Rudolf von Jhering en Europa: un estudio histórico-comparado, in: Revista Telemática de Filosofía del Derecho 17, 203-250

Lloredo Alix, Luis (2016), La recepción de Rudolf von Jhering en Asia y Latinoamérica, in: Revista del Anuario de la Sociedad Chilena de Filosofía Jurídica y Social 33 (forthcoming)

Losano, Mario G. (1970), Le concezioni politiche di Rudolf von Jhering in una lettera inedita ad Heinrich von Treitschke, in: Cerutti, Furio (Ed.), Studi in memoria di Carlo Ascheri, Urbino

Losano, Mario G. (1973), Tre consiglieri giuridici europei e la nascita del Giappone moderno, in: Materiali per una storia della cultura giuridica III, 519-567

Losano, Mario G. (1974), La Scuola di Recife e l'influenza tedesca sul diritto brasiliano, in: Materiali per una storia della cultura giuridica IV, 323-415

Losano, Mario G. (1996), Tobias Barreto und die Rezeption Jherings in Brasilien, in: Behrends, Okko (Hrsg.), Jherings Rechtsdenken. Theorie und Pragmatik im Dienste evolutionärer Rechtsethik, Göttingen

Losano, Mario G. (1998), La lotta per il diritto di Jhering nel dibattito politico dell'Italia degli anni trenta, in: Materiali per una storia della cultura giuridica XXVIII, 195-216

Losano, Mario G. (2000a), I grandi sistemi giuridici, Roma-Bari

Losano, Mario G. (2000b), Un giurista tropicale. Tobias Barreto fra Brasile reale e Germania ideale, Roma-Bari

Marí, Enrique (2014), La interpretación de la ley, Buenos Aires

Mercadante, Paulo, Paim, Antônio (1972), Tobias Barreto na cultura brasileira. Uma revaliaçao, São Paulo

Merle, Jean-Cristophe (2004), Nietzsches Straftheorie (II 8-15), in: Höffe, Otfried, Zur Genealogie der Moral, Berlin

Metzger, Gilbert (2006), Liang Qichao, China und der Westen nach dem Ersten Weltkrieg: ein Viertel der Menschheit hat gegenüber der gesamten Menschheit die Verpflichtung für ein Viertel ihres Glücks, Berlin

Minear, Richard H. (1973), Nishi Amane and the Reception of Western Law in Japan, in: Monumenta Nipponica 28/2, 151-175

Mintz, Franck, Fontanillas, Antonia (1993), Bibliografía, in: Anthropos (Suplementos): Diego Abad de Santillán. Historia y vigencia de la construcción social de un proyecto libertario 36, 175-182

Modéer, Kjell Å. (1996), Jherings Rechtsdenken als Herausforderung für die skandinavische Jurisprudenz, in: Behrends, Okko (Hrsg.), Jherings Rechtsdenken. Theorie und Pragmatik im Dienste evolutionärer Rechtsethik, Göttingen

Murakami, Junichi (2006), Sozialdarwinismus im Japan der Meiji-Zeit. Eine konservative Wende des Frühliberalismus?, in: Marutschke, Hans-Peter, Beiträge zur modernen japanischen Rechtsgeschichte, Berlin

Nishimura, Shigeo (1996), Jherings verfassungspolitische Ratschläge an die japanische Regierung und die Verleihung des Ordens, in: Behrends, Okko (Hrsg.), Jherings Rechtsdenken. Theorie und Pragmatik im Dienste evolutionärer Rechtsethik, Göttingen

Paul, Wolf (2001), Barreto, Tobias (1839-1889), in: Stolleis, Michael (Hrsg.), Juristen. Ein biographisches Lexikon, 65-66

Peces-Barba, Gregorio (1978), La filosofía de los límites del poder en los siglos XVI y XVII, in: Peces-Barba, Gregorio, Libertad, poder, socialismo, Madrid, 1-76

Posada, Adolfo (1906), Valentín Letelier, in: Letelier, Valentín, Ensayo de Onomatología. O estudio de los nombres propios y hereditarios, Madrid-Santiago de Chile

Posada, Adolfo (1986), La República argentina. Impresiones y comentarios, Buenos Aires

Poveda, Ignacio (2004), Clóvis Beviláqua, in: Domingo, Rafael (Ed.), Juristas universales 3, 728-730

Prado, Gustavo H. (2008), El grupo de Oviedo en la historiografía y la controvertida memoria del krauso-institucionismo asturiano. Aportes para un postergado debate, Oviedo

Rahn, Gunthram (1990), Rechtsdenken und Rechtsauffasung in Japan. Dargestellt an der Entwicklung der modernen japanischen Zivilrechtsmethodik, München

Ramos Núñez, Carlos (2011), José León Barandiarán, el esteta de la dogmática, in: Vidal Ramos, Roger (Coord.), Libro de ponencias del sexto Congreso Nacional de Derecho Civil, Lima

Reale, Miguel (1977), Horizontes do Direito e da História. Estudos de Filosofía do Direito e da Cultura, 2ª ed. São Paulo

Rivaya, Benjamín (2000), Comunismo y compromiso intelectual: Wenceslao Roces, Madrid

Robles Morchón, Gregorio (2005), La influencia del pensamiento alemán en la sociología de Émile Durkheim, Navarra

Squella, Agustín (Ed.) (1976-1977), Ihering y la lucha por el Derecho, Valparaíso

Stammler, Rudolf (1922), Lehrbuch der Rechtsphilosophie, Berlin-Leipzig

Stučka, Piotr (1964), La funzione rivoluzionaria del diritto e dello Stato, in: Cerroni, Umberto (a cura di) Teorie sovietiche del diritto, Milano

Svensson Marina (2002), Debating Human Rights in China: a Conceptual and Political History, Lanham, Maryland

Treiber, Hubert (2000), I concetti fondamentali della sociologia del diritto di Weber alla luce delle sue fonti giuridiche, in: Materiali per una storia della cultura giuridica XXX/1, 97-108

Turner, Stephen (1990), Weber and his philosophers, in: International Journal of Politics, Culture & Society 3/4, 539-553

Varejão, Marcela (2005), Il positivismo dall'Italia al Brasile: sociologia del diritto, giuristi e legislazione (1822-1935), Milano

Weber, Max (2002), Economía y sociedad, trad. de J. Medina, J. Roura, E. Ímaz, E. García Máynez y J. Ferrater, Madrid

Weber, Max (2005), El político y el científico, introd. de R. Aron, trad. de F. Rubio Llorente, Madrid

Xiao, Yang (2002), Liang Qichao's Political and Social Philosophy, in: Chung-Ying Cheng and Nicholas Bunnin, Contemporary Chinese Philosophy, Oxford, 17-36